

The taxability of maintenance agreements depends upon whether charges for the agreements are included in the selling price of the tangible personal property. See 86 Ill. Adm. Code 140.301. (This is a GIL).

August 1, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 2, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I have a situation where a vendor is trying to charge COMPANY Illinois sales tax on a maintenance/service agreement for the telephones, which are leased. I spoke to Becky, a representative from the IL Dept of Revenue, about the situation.

I understand that the maintenance agreement is not taxable in Illinois. My vendor, BUSINESS, requires a tax exemption certificate in order for them to stop charging sales tax. I explained that the company is not sales tax exempt, but the service agreement is not taxable. They still want something in writing.

So, I respectfully request that you send me a letter, which I can forward to them, stating that service agreements are not taxable in Illinois.

DEPARTMENT'S RESPONSE:

Based upon the limited information contained in your letter, we believe that you would not incur any Illinois Retailers' Occupation Tax or Use Tax liability on the purchase price of the maintenance agreement. However, the vendor of the maintenance agreement will incur a Use Tax liability on the maintenance parts provided under the agreement as described below.

The taxability of maintenance agreements depends upon if charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. No tax is incurred on the maintenance services or parts when the repair or servicing is performed.

If maintenance agreements are sold separately from tangible personal property, sales of the agreements are not taxable transactions. However, when maintenance services or parts are provided under the maintenance agreements, the seller of the maintenance agreement will be acting as a service provider under provisions of the Service Occupation Tax Act (SOT). The SOT provides that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See the enclosed copy of 86 Ill. Adm. Code 140.301(b)(3). Further, the purchaser of the separate agreement or warranty is not charged tax on the labor or tangible personal property that is transferred incident to the completion of the maintenance agreement. If a deductible is charged to the purchaser under the terms of the separate agreement, the deductible is also not subject to tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.